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## SOUTH CAROLINA DISPENSARY LAW

Its Origin and Early  
Difficulties and  
Operation.

LUCID PAPER BY L. O. TIMMONS

READ BEFORE THE RESEARCH  
CLUB YESTERDAY  
EVENING.

Accumulated Sentiment Created by  
Temperance Societies Caused Ac-  
tion—Extreme Measures Created  
Rioting—Courts Upheld Law.

L. O. Timmons by request prepared the following paper for the Research Club. It was read at the meeting of that organization at the home of Hon. J. B. Atherton yesterday evening. Mr. Timmons belongs to South Carolina and his later newspaper work there was in the thick of the fight over the adoption of the Dispensary system. Since coming to Honolulu some years ago, Mr. Timmons has kept constantly posted on the operation of that method of regulating the liquor traffic in his native State. His contribution of this paper to the current discussion of the liquor question must be regarded on all hands as highly valuable.

**The Dispensary System.**  
I have been requested by members of the Research Club to impart to them and their association, at this meeting, information in regard to the origin, establishment and subsequent history of the so-called Dispensary system of South Carolina, which has to do with the liquor traffic of that State. From the tenor of the invitation, I take it that I am not expected to express an opinion in regard to the working of the system there nor as to the probable effect of the application of a similar law to this Territory. Were I called upon to express an opinion in regard to the system in Hawaii I think I should, at this time, decline, on account of the numerous side questions opened up by our insular position and the differences in conditions to those of any other State of Territory in the Union. To follow up this subject would entail arguments too lengthy for this talk or for one meeting of your club.

The Tillman administration of South Carolina was elected to power in November of 1890. It was the radical element, defeating the conservatives, that had held sway for sixteen years. The Dispensary law was not the result, however, of the election of this particular faction to supremacy in the legislature, but rather to a temperance agitation that had gone on for a decade or more. The Sons of Temperance, the W. O. T. U. and similar organizations had flourished and attained great power. Six or eight years prior to the birth of the Dispensary the temperance faction was able to wield, and did wield, a powerful influence upon the legislature and the administration. It was by their direct influence that local option was secured to counties and towns, and many towns went down on their respective, popular ballots. From about 1888 a movement was started for absolute prohibition. L. D. Childs, who, if memory serves, led the fight, the movement failed but only to be renewed in the legislature of 1891. The Dispensary bill was a compromise between the prohibitionists and the advocates of a license system. After a long debate it was decided to refer the matter to the people. This was done in the general election of 1892. In that election only 80,000 votes, out of a total of about 190,000, were cast. I am unable to tell you why the vote was so small. This Dispensary system won by about 10,000 votes.

The law went into effect on July 1, 1893. On the morning of that day every saloon and every manufactory of liquor in the State was in the hands of the government. All property thus confiscated was sold at public auction and the proceeds were paid for D. H. Traxler, the first head of the department, had the not altogether pleasant task of completing this transfer and the establishment of sub-dispensaries in all cities and towns of the State. During the first year the law was not a success. The department was literally submerged in suits of every imaginable kind. In March of 1894 a dreadful riot occurred at Darlington in which several citizens and constables of the State were killed and other constables were chased into the swamps by bloodhounds. One dispensary was blown up with gunpowder and another was burned. The cause of these riots was the sweeping law that gave to the constables the right to enter private residences or even search the baggage of travellers at hotels for liquor. Many amendments were made and, finally, in 1897, a complete re-draft of the law was brought about. The new law differs very little from the old, save that it eliminates several features objected to most strenuously by the people at large.

All attacks upon the law on Constitutional and other grounds failed before all tribunals, except the United States Circuit Court at Charleston in one instance, and that ruling was not sustained by the Supreme Court on appeal. The Inter-State Commerce

law was not effective, the courts sustaining a State in recognizing what it might term an evil and handling it in its own way.

With these preliminary remarks, I wish to give you an outline of the law as it now is. The Act begins by declaring that the manufacture, sale, barter or exchange, receipt or acceptance for unlawful use, delivery, storage and keeping in possession within the State any liquors or any alcoholic compound used as a beverage, is prohibited. All alcoholic liquors in the State, whether manufactured therein or not, and not having thereon the certificate of purity after tests by the chemist of South Carolina college are declared to be of a detrimental character "and their use are declared to be against the morals, good health and safety of the State." Such goods may be confiscated wherever found. It is provided, however, that a person may purchase liquors outside of the State, securing a certificate from the chemist as to purity, but this certificate is good for only sixty days, and if left over beyond that time the liquor is subject to confiscation. Any person selling any of the liquor so imported, and under the protection of this temporary certificate, is liable to double punishment.

A board of three temperate men has control of the system. They are appointed by the legislature for two years, and receive the same salary and mileage as members of the legislature. There is also a commissioner, also appointed by the legislature, who is the executive head of the department. He receives a salary of \$2,000 a year and is elected for two years. Purchases of liquor are made by tender. Samples must be submitted for examination, and in case of the liquor purchased not coming up to sample, the seller must pay all expenses and also the difference in price between his bid and the next lowest bidder. Bonds are held against this contingency. It is especially provided in this connection that the State shall purchase nothing from any manufactory sending any agent or drummer into its limits for the purpose of soliciting business. The commissioner is allowed a bookkeeper at a salary of \$1200 a year and such other assistants as the Board of control may deem necessary. The bond of the commissioner is now fixed at \$75,000.

The meat of the law comes in Section 4, of the Act, which reads as follows: "The State Commissioner shall, before shipping any liquors to dispensers, except larger beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely sealed, and it shall be unlawful for the dispenser to break any of such packages, or open the same for any reason whatsoever. He shall sell the packages only, and no persons shall open the same on the premises. Provided, this section shall not apply to malt liquors shipped in cases or kegs, or bottles thereof shipped in barrels; and such malt liquors may be sold by the county dispenser in such quantities, of not less than one pint, as he may see proper. Provided, the same shall not be drunk on the premises. Dispensers shall open their places of business, and sell only in the day time, under such rules as may be made by the State Board of Control, or by the County Board of Control, subject to the approval of the State Board of Control."

In this section of the law is embodied, as will be readily seen, the most important feature of the whole system: That of stopping the practice of "treating," and notably its reduction in the use of liquors and drunkenness in the State is traceable to this cause. County Boards of Control are appointed by the State Board of Control, and dispensers are appointed by the former, subject to the approval of the latter. Except in Beaufort and Horry counties, the county boards are permitted to locate dispensaries in other than incorporated towns; but in no township can a dispensary be located except by vote of the people. The manner of purchasing liquor at the dispensaries is also a bit unique and entails some difficulty. The object of this is to shut out as far as possible, habitual drinkers and minors. This is the law covering the point: "Before selling or delivering any intoxicating liquors to any person, a request must be presented to the dispenser, printed or written in ink, dated of the true date, stating that the applicant is of age, for whose use the liquor is required, the quantity and kind required, and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the county dispenser or his clerk, who receives and files the request. But the request shall be refused if the person of good character and habits, known personally to him, that the applicant is not a minor, and is not in the habit of using intoxicating liquors to excess."

Distilleries are permitted within the State, but the product of such enterprises must either be sold to the Dispensary department or shipped out of the State, bearing the stamp and seal of the Board of Control. Any person may make wine for his own use, but the same is subject to inspection and analysis by the examiner at any time. Druggists are allowed all the alcohol they may require, but there are penalties upon dispenser, druggist and purchaser should any be sold for other than medicinal purposes. Liquors at clubs are prohibited absolutely. Under a bond of \$3,000 hotel managers may purchase liquors from the dispensaries and serve the same upon their tables; at

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## LEGISLATIVE MEMBERS HIGHLY INDIGNANT

Feel That They Were  
Insulted by Mr.  
Hoogs.

TROUBLE OVER TRIP TO MOLOKAI

NO ONE ALLOWED ABOARD  
BOAT WITHOUT HOOGS'  
PERMISSION.

Speaker Akina Among Those Turned  
Back by the Police Whom Hoogs  
Had Had Detailed to Stand Guard  
Over the Gang Plank.

The steamer W. G. Hall bearing the members of the legislature on their visit to Molokai which was scheduled to sail at 10 o'clock last night did not get away until nearly midnight and then she only had on board a portion of the members who had intended going on the trip. Serious trouble arose at the wharf about nine o'clock over orders given by W. H. Hoogs which prevented members of the legislature from going aboard until after that gentleman had given the word permitting them to do so. Nothing had been said about this in the house and some of the members went to the boat early expecting to go aboard and become comfortably situated for the night before the vessel left the harbor. Early in the evening Mr. Hoogs went to the police station and asked to have two policemen detailed to go to the boat and prevent anyone from going aboard, no matter who until after Mr. Hoogs arrived. In accordance with this request officers Chas. Baker and Chas. Kakala under Lieut. Napo were detailed to stand guard at the gang plank and prevent even members of the legislature from going aboard the vessel until Mr. Hoogs waved his magic wand. A police official in speaking of the affair last night said Mr. Hoogs instructed the officers detailed by the police office that he was chairman of the committee and that they should take their orders from him and that they were not to allow any one to go aboard without his (Hoogs') permission, fully corroborating the statements of the members of the legislature as given below.

Among those refused permission to go aboard the boat when they arrived at the wharf were Speaker Akina of the House and Representatives Beckley and Prendergast. These members and others were amazed at such orders and came back up town highly indignant over their treatment. What they thought of it and what their experience was with the police is best told by the gentlemen themselves. "I arrived at the wharf about 9 o'clock," said J. K. Prendergast, a member of the Assembly, last night after returning from the boat. "I left my mother's house at a quarter to nine and it would take me about fifteen minutes to reach the wharf. Arriving there I found the gangway guarded by two policemen who said they had orders to keep all people off the boat."

"But I am a member of the legislature," I said and am entitled to go aboard the boat.

"We cannot help that," said the policemen, "our orders are not to allow anybody aboard the boat."

"Who gave you such orders?" I asked.

"Mr. Hoogs," was the reply.

"All this time one of the policemen stood with his arm across the entrance to the gangway to prevent me from starting up it. I walked along the wharf and saw Assemblyman Haahoe, Senator Kaohi and Assemblymen Ahuli and Kaumakao on the deck of the vessel. They asked me what was the matter and then the police called to them to know what they were doing on board. Mr. Haahoe came down the gangplank to see what was the matter and was told the same as I had been, that the police had orders not to allow anyone on the boat, no matter whom. But as Mr. Haahoe is here I think he had better speak for himself as to what the police said to him."

"I went down to the boat early along with Senator Kaohi and Representatives Ahuli and Kaumakao," said Mr. Haahoe. "The police had not arrived then and we went aboard. When we heard the talk between Mr. Prendergast and the police we came to the rail and looked over to see what was the matter. The police called to us to know what we were doing aboard, saying they had orders not to allow anyone on board. At this I walked down the gangplank to ask the police about their orders. As I came down to them one of them stretched his arm across the plank and told me I must get off the boat."

"But I am a member of the legis-

lature and have a right to be here," I said. "Don't you know I am a member of the legislature?" I asked.

"I know you are," was the reply of the officer, "but I cannot help that, as my orders are to keep all men off the boat until Mr. Hoogs arrives." At this I walked off the boat and the others walked off with me and as of us came up town."

But the worst insult of all seems to have been offered to Speaker Akina of the House and that official felt very much wounded, as he had a right to, over the way in which he had been treated. In speaking of the affair Mr. Speaker Akina said:

"It was a few minutes after 9 o'clock when I arrived at the boat. I walked up to the gangplank to go aboard, not thinking that I was to be stopped. I saw two policemen standing at the entrance and when I reached them they stopped me and said I could not go aboard."

"But I am a member of the legislature," I said, "and have a right to go aboard."

"We can't help that, we have orders not to allow anyone to go aboard," replied the policeman.

"Well, I am the Speaker of the House and I think I have a right to go aboard," I said. "That don't make any difference who you are, our orders are not to let anyone go aboard no matter who they are, not even Jesus Christ himself," said the police.

"Who gave you such orders?" I demanded to know. They replied that the orders were given by Mr. Hoogs of the House who claimed to be in full charge of everything. They even called the lieutenant at the gate and he said that the officers had told me correctly what the orders were.

"To make sure about the orders given to the police I went directly to the police station as soon as I came up town and asked who requested any police to be sent to the wharf to keep members of the legislature off the boat going to Molokai. The clerk in charge said that Mr. Hoogs had asked for two policemen to go to the boat and keep guard and had given instructions not to allow anyone aboard until he (Hoogs) said for them to. The clerk wrote out the instructions Hoogs gave him about it and here they are:

"Send two reliable officers to the wharf to keep everybody from going aboard the ship, no matter who they are, even Jesus Christ himself. I don't give a damn for anybody, keep them all off."

"Oh, yes, I should have told you that while I was talking with the police I told them that Hoogs had no authority to give any such orders; that he had been appointed a committee of one to secure transportation and that when he reported to the House in the afternoon his work was done. That if anyone was in charge now it was Chairman Beckley of the committee which was going to conduct the investigation at Molokai. Mr. Beckley came up about that time and supported what I had said, but they refused to let him go aboard the same as they had done with me."

"After Mr. Prendergast and myself and several others were on our way up town from the wharf Mr. Hoogs came after us in a hack and overtook us near the custom house and began begging us to go back, saying it was all due to a misunderstanding, but I went to the police office to see what orders he had given there, and according to what the clerk wrote down for me as his instructions I don't think there was any mistake. It was an intention to insult and humiliate the members of the House."

Seen at the wharf before the steamer sailed Representative Hoogs said:

"The affair has taken an unfortunate turn, for which I am sorry. I made explanations to the gentlemen who have been offended, but to no purpose. This is how the misunderstanding took place: I had sent to police headquarters early in the evening for several officers to guard the gang-plank and allow no one on board who did not have business at Molokai. In previous years this has been done and those whose official duties demanded their presence at the leper settlement were afterward criticised for not excluding the intruders. The police exceeded their function and allowed no one to go on the vessel. Even Mr. W. O. Smith was prevented from going on board. I expected to be at the wharf at 9 o'clock and was there a few minutes after that time. It seems, however, that about half past eight several of the legislators came down, among whom were the gentlemen whose feelings have been hurt. The police exceeded their orders and allowed no one to walk up the gang-way. A few minutes later, I was coming down Fort street and, much to my surprise, saw five or six of those whom I thought were to be passengers on the Hall, returning. I called to them and said 'When are you going on board?' The answer was, 'We are not going.' This surprised me, and I asked for an explanation."

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## SENATORS WILL GO TO THE BUNGALOW

Upper House Becomes  
Weary of Inferior  
Quarters.

INSPIRATION FROM ORGANIC ACT

EXPENSE BILL READ FOR SECOND TIME IN THE HOUSE.

The Consideration of Senate Rules  
Was Accomplished Yesterday—  
House Transacts Much Business  
—Leper Petition Brought Up.

When President Russell's gavel falls Monday morning in calling the Senate of the Territory of Hawaii to order, that body will in all probability be found conveniently and pleasantly ensconced in the upper floor of the Bungalow. Such was the decision reached by the majority of the upper house aided by the consent of Governor Dole which was announced shortly before adjournment for the day was taken.

The controversy which led to the change from the poorly arranged quarters in the Capitol building hallway to the new location was prolonged as well as spirited. It occupied most of the morning session.

It fell to Senator John Brown to set the ball rolling. When that gentleman arose and moved that the resolution relating to a change of quarters for the Senate, introduced some days ago by Mr. White, be taken up, the Senators straightened up in their chairs and prepared themselves for a renewal of activity, after a half hour of prosaic routine.

Cecil Brown led off for the minority. He thought the resolution offered by Mr. White was somewhat brusque in its phrasing. He greatly questioned the convenience of the bungalow as well as the legality of the Senate's taking possession of the premises now occupied by the United States government. By so doing he was of the opinion that the upper house was overstepping its authority. Mr. Brown favored the appointment by the chair of a committee of three members, with Mr. White as chairman, to confer with the proper territorial officials in regard to the unsuitability of the Senate quarters, and arrange for a more suitable place for holding the sessions. Mr. Brown afterward embodied a portion of his remarks into a resolution, which passed. The president thereupon appointed Messrs. White, Baldwin and Kalanokani as such committee.

In defense of his resolution, Mr. White grew eloquent and fired some solid shot into the ranks of the opposition. He maintained that he was in the right in making strenuous objections to the hall. "These walls have ears," said he, and when appointments came up for consideration, he wished to preclude the possibility of eavesdropping. Under the present circumstances there could be no privacy should the Senate wish to go into executive session. He again asserted that the quarters were entirely inadequate for the purposes assigned by the governmental officials. To remain in the present quarters was also said to be conducive to severe colds because of draughts. There were others besides Senators who heartily agreed with the Senator of Lahaina in this particular objection.

Mr. Brown endeavored to stump Mr. White by asking him what he believed the Senate could do, if upon request to the territorial officials it was informed that there were no other available quarters for them. Mr. White replied that the Senate could compel the secretary, the attorney general or even the governor, to vacate his office quarters if it was found really necessary for the comfortable accommodation of the Senate. Mr. Brown rushed to the defense of the executive branch, maintaining that such proceedings would result in an upheaval. It would place the Senate and the executive officials at loggerheads.

The A B C's of the obstructionists, Messrs. Achi, Brown and Carter, kept up a running fire between themselves and Mr. White until Mr. Paris became aware of the fact that much valuable time was being lost. He therefore passed out a few soothing words which had instant effect. Mr. White agreed to modify the tone of his resolution, at the same time accepting Cecil Brown's motion. The committee to confer with the territorial officials was appointed and every one took a breathing spell.

After calling the Senate to order and passing upon the minutes, about the first business transacted was a motion by Mr. Achi, instructing the clerk to order 100 printed copies of the governor's message for distribution.

A partial report by Mr. Baldwin, chairman of the committee on arrangements for the trip to the leper settlement at Molokai, came next in the order of business. In substance he stated that John Ena had made a proposition of furnishing the W. G. Hall at \$250 per day, the Nihau at \$200 and the Waiakale at \$175. Representative W. H. Hoogs had been selected by the joint committee to complete arrangements. Mr. Baldwin also stated that in all probability the Hall would be secured, as that steamer was far the most commodious. Owing to the size of the party he believed that it would probably cost the legislature about \$300 a day, and the two days consumed on the trip would be at an expense of \$600.

Mr. Achi arose to inquire why the Leper Hawaii and the local Chinese and Japanese newspaper representatives had not been invited. Mr. Baldwin said that it had not been the intention to overlook any paper. An ap-

plication to the proper quarter would bring the desired permit.

Mr. Baldwin then secured permission to read a petition from Kalanokani, praying that the Settlement be given local self government; that an appropriation be made for the Settlement's water supply; that the Board of Health purchase a steamer for traffic between the Settlement and other parts of the islands; and making twenty-six other requests.

Cecil Brown's motion that the petition from the leper settlement be referred to the Senate Molokai committee was carried. The President appointed the following committee: Senators Kalanokani, Kaue, Kaohi, Baldwin and Kanuha. Mr. Kanuha asked to be excused and Mr. Carter was appointed in his place.

The secretary was instructed to inform the House of the appointment of the committee.

It was close to the hour of noon before the Senate was ready to resume the consideration of rules. The duties of the interpreter as outlined by rule 88 caused some discussion. Mr. Brown moved to strike out the rule. He said that himself and his following wanted to go on record in the matter. They did not intend to offer opposition but simply wanted the ayes and nays called in the vote. The minority claimed that they wanted to line up properly with the Organic Act, hence could not see their way clear to vote for the endorsement of the Hawaiian language in deliberations of the Senate.

When the vote was taken strict party lines were maintained. The nine Independents voted solid for passing the rule as read. The opposition recorded a "solid six" against the measure.

**Afternoon Session.**

Before adjournment for the day was taken the Senate finished the consideration of rules. Throughout the afternoon session the Senate made rapid headway in completing the list.

With one exception there was hardly a break in the adoption of the rules governing the Senate and its officers. A clause pertaining to the holding of secret sessions provoked spirited discussion from the minority side. Mr. Brown wanted the rule embodying the obnoxious paragraph to be stricken out. Mr. Carter was at his elbow in the matter with a ready second. The A B C of the minority were in perfect accord in their failure to understand why the legislature should resort to secret sessions. "Let the light of day shine in upon our deliberations," said Mr. Carter. There was also some mention of underground methods, but the majority evidently believed that the time might come when such a session would be desirable, for when a vote was taken the rule stood as read.

The report of Mr. White regarding the committee's securing the bungalow was taken up for discussion. Adjournment was taken before 3 o'clock until 10 o'clock Monday morning.

**Senate Sittings.**

The provisions of the Organic Act were referred to in many instances in senatorial discussions yesterday.

The secretary of the Senate was authorized to procure 100 printed copies of the rules as finally adopted in both English and Hawaiian for distribution.

Governor Dole gave the necessary orders yesterday to have the upper floor of the bungalow cleared. The furniture and fixtures of the Senate will be installed therein today.

The necessity of a ten-minute rule was never more apparent than during yesterday's session when the change of Senate location was broached, and in the consideration of the rule regarding the holding of executive or secret sessions.

During the controversy over the changing of the Senate quarters from the hallway of the Capitol building, Territorial Secretary Cooper wore an anxious expression. He sent a hasty summons for Senator Cecil Brown and they were soon engaged in an earnest conversation, just outside of the "wine room partition."

The report of the committee on securing better accommodations for the Senate was accepted upon motion of Mr. Brown. Upon receipt of a written authorization from the Governor, the same committee was instructed to take proper measures to remove the paraphernalia to the designated locality.

Secretary of the Territory Cooper has evidently read the handwriting on the wall. His stenographic representative failed to put in an appearance in the Senate yesterday, hence it is assumed that the "government at Washington" will have to worry along with the information derived from a perusal of the regular journal of that body.

In the course of his remarks on the floor of the Senate Mr. Cecil Brown flippantly referred to his colleague Mr. White as "Bill White." The Senator from Lahaina thereupon arose and expressed himself in no uncertain terms regarding the allusion given him by Mr. Brown. He thought it greatly belittled the dignity of the Senate for such a personal allusion to be made upon the floor of the upper house, and expressed the hope that the erring member would not again overlook the fact that, while in session at least, they were members of the Senate of the Territory of Hawaii. Mr. Brown apologized.

**IN THE HOUSE.**

The much discussed combination of the independent members of the legislature which one of the papers of this city takes such delight in snarling about was proved to be nearly all myth at the session of the House of Representatives yesterday. The "party lash" which has been so much in evidence in the columns of the sheet during the past week was shown to have no existence in fact. The demonstration of the misrepresentation of the paper came through the shelving of a joint resolution introduced by the Independent leader, John Emmeluth, toward the close of the session.

Emmeluth proposed that the House adopt some strong suggestions on the

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## SPECIAL TERM OF CIRCUIT COURT

It Will Have Length  
of the Regular  
Term.

JURY TRIALS ARE PROGRESSING

SERIOUS CHARGE AGAINST A  
REAL ESTATE FIRM'S  
TRANSACTION.

The Water Tunnel Controversy Be-  
tween Hawaiian Commercial &  
Sugar Co. and Wailuku Planta-  
tion Co.—Probate Dispositions.

Judge Humphreys took up probate business the first half hour yesterday morning.

The executors of the estate of the late M. McInerney were discharged. Accounts of trustees of the estate of the late J. H. Wood were approved. Hiram Bingham and Lydia B. Coan, executors of the estate of Elizabeth K. Bingham, have filed an inventory with a valuation of \$5758.50.

**Jury Trials.**

Mann was tried yesterday for assault and battery with a weapon on Kaomea. Deputy Attorney General J. W. Cathcart prosecuted and Sam'l F. Chillingworth defended the accused. The following jury sat: A. Barnes, T. H. Petrie, G. W. Clarke, T. F. McTighe, D. G. Camarinos, D. M. Ross, J. H. McKenzie, W. T. Schmidt, F. R. Helm, C. K. Quinn, D. T. Bailey and J. Spencer.

The jury retired at 4:50 to consider their verdict.

**Special Term Ordered.**

Chief Justice Frear has approved an order of Judge Humphreys ordering a special term of the Circuit Court for this circuit, beginning Tuesday, March 19, and continuing for the period provided by law. This special term follows the extension of twelve days to the February term previously ordered by Judge Humphreys. The result of these orders is that Judge Humphreys will, unaided, have presided for a continuous period of ten weeks over a jury term, saving one week in which doubtless he will be busy at chambers. This will be the record term of the beginning of the Hawaiian judiciary. There have been extensions and special terms before, but a single judge has never been obliged to hold court for so long a period.

**Plantation in Controversy.**

Defendant to the suit for injunction of Wailuku Sugar Co. vs. Hawaiian Commercial & Sugar Co. has filed an answer. It admits the ownership of plaintiff in certain lands described in the complaint, also that defendant has commenced excavating or constructing a certain tunnel below or near the bed of Wailuku stream. "But this defendant denies," the answer proceeds that it is digging said tunnel directly toward said parcels of land, or that the defendant intends or threatens to construct such tunnel under or through or across said parcels of land so owned and possessed by the plaintiff, or to remove therefrom earth, stone or gravel, or to erect structures of wood within said tunnels where crossing said parcels of land, or otherwise to trespass upon or in any way injure said lands.

It is defined by defendant that the two parcels of land in question adjoin each other in the middle of the Wailuku stream.

Further answering, the Hawaiian Commercial and Sugar Co. says "that it has been for several months engaged in making the said tunnel and that its plans concerning the course and direction of the same have always been mentioned freely to any persons concerned or interested in the same and that such information has always been available to the plaintiff, and that the plaintiff, its manager, officers and agents have at no time intimated to this defendant until the service of the injunction obtained in this suit, that they, or any of them, supposed or believed that the said tunnel was intended to extend over, across or under any of the lands of the plaintiff."

Defendant refers to a map made in 1882 by M. D. Monsarrat, surveyor, copies of which have been used by both parties, and "submits to this honorable Court that if the plaintiff proposes to dispute the title of the defendant, as shown by said map, after such long acquiescence by both parties therein, it should first bring an action of law for the purpose of ascertaining its claim of title therein." Alfred S. Hartwell is attorney for defendant.

**Alleged Fraudulent Deed.**

A. R. Phillips has brought an equity suit against M. G. Silva and J. M. Vivas, copartners under the firm name of Silva & Vivas, which charges the defendants with fraudulently obtaining a deed of lands from him to them, without any consideration, under pretense that the instrument was simply for the purpose of securing a loan of \$2000. Phillips avers he never received the loan. He values the lands at \$4000, saying he has a life interest in them. The incomplete descriptions would indicate a total area of something over six acres. Plaintiff prays for cancellation of the deed and for an injunction restraining defendants from selling, mortgaging or leasing the premises during the pendency of his suit. Francis J. Berry is attorney for Phillips. Defendant Vivas is a licensed attorney in all the Territorial courts.